

**West County Toxics Coalition, North Richmond Shoreline Open Space Alliance,  
TODOS UNIDOS, Environmental Justice Coalition for Water,  
California Indian Environmental Alliance, Clean Water Action,  
Center for Environmental Health**

April 7, 2010

Ms. Kathryn Hart, Chair  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

***Re: Proposed Delta Methylmercury TMDL/Basin Plan Amendment***

Dear Chairwoman Hart and Fellow Members of the Board,

The problem of mercury, and in particular methylmercury, in the Delta has very real impacts on the people living in and around the region, especially communities with high levels of exposure due to local subsistence, cultural, and recreational fishing. Many of us were not involved in the stakeholder process that influenced the development of this draft basin plan amendment (BPA)/TMDL for methylmercury in the Delta, either because we were unaware of the process or because we did not have the resources, accessibility to meetings, or ability to participate in such a time intensive formal process. As a result, we wish to provide the Board with the following comments on the proposed basin plan amendment (BPA)/TMDL for methylmercury, as it has a direct bearing on the health and safety of the communities we work with and/or represent.

**1. The TMDL objectives will not protect fishing communities**

**We recommend that the BPA's fish tissue target be revised to allow consumption of 128-160 g/day of Delta fish, which is in line with the US EPA's recommendation of a rate of 142.4 grams/day and would allow 4 to 5 meals a week of Delta fish. We also suggest including a subsistence fishing designation as a beneficial use for the Delta so as to protect low income communities and communities of color who consume high levels of Delta fish.**

We support the methylmercury focus of this BPA as it is the form of mercury that collects up the food chain and threatens our health. However, we strongly oppose the proposed fish tissue target, which will in fact limit the safe consumption of trophic level 3 and 4 Delta caught fish (plus some commercial fish) to one meal a week. This totally disregards the fact that families in many of our communities eat much higher levels of Delta fish, often for cultural reasons or out of economic need. While we recognize the challenges in addressing methylmercury in the watershed, the ultimate goal of the TMDL, under the provisions of the Clean Water Act, must be to protect the health and safety of *all* fishing communities, including low income communities and communities of color. We urge the Board to ensure that this BPA is revised to better reflect the needs of all of our communities so that both recreational and subsistence fishers are ultimately protected.

**2. We cannot wait 9 years for improvements to begin**

The proposed BPA establishes a 9-year study period, referred to as Phase 1, during which dischargers will not be implementing methylmercury reduction control programs. In our view, the expectations during Phase 1 are too limiting and will allow for unnecessary delay. For example,

while the BPA does state that dischargers, particularly point source dischargers, shall be required to implement total mercury control programs in the interim, it appears that these measures will be largely aimed at maintaining the status quo versus actual reductions. For some dischargers, particularly non-point sources of mercury, compliance with total mercury reduction requirements will be based on documenting actions taken and not the actual results of those actions. Furthermore, the BPA states that the Board will consider extending the study period as we approach the 9-year mark, which could further delay the Delta Mercury Control Program Review for an additional two years (see BPA page 8, paragraphs 4 and 5 and page 8, paragraph 1).

Implementing total mercury control programs is not the same as actually reducing discharged mercury levels and is not acceptable. In addition, not only should the 9-year deadline to complete methylmercury control studies be rigorously enforced by the Board, early implementation of methylmercury reduction strategies should be prioritized whenever possible. We therefore urge the Board to make three revisions to ensure real reductions of both total mercury (in the interim) and methylmercury occur in the most expedient way possible:

- Include clearly defined, measurable reductions of total mercury during Phase 1 for all dischargers, including non-point sources,
- Delete the language on pages 8 and 9 as indicated above that refers to extending the control study period,
- Strengthen the language in paragraph 6, page 9 by revising it as follows (underline indicates changes to existing text)

*“The Regional Water Board shall require implementation of appropriate management practices. The methylmercury management plan(s) developed in Phase 1 shall be initiated as soon as possible, but no later than six (6) months after Phase 2 begins. In addition, the Executive Officer shall retain the authority to require appropriate methylmercury best management practices or other controls to be implemented at anytime during Phase 1 based on periodic review of the control studies’ progress.”*

**3. Decision making processes must be accessible to all communities and not discharger dominated or disproportionately influenced.**

While we applaud the BPA's intention of ensuring public participation during both Phases 1 and 2 of this TMDL, we are concerned that a formalized stakeholder group as we had over the last year will again limit true community participation and lead to a discharger/ agency driven process. We suggest that instead of establishing a similar stakeholder model, the BPA should require tribal and other community representation on the Technical Advisory Committee with resources made available to ensure their ability to participate. In addition, meetings should be rotated throughout the Delta region to encourage public input and transparency.

**4. Exposure reduction strategies must be developed from the community up**

The BPA rightly includes language on the exposure reduction program mandated by the State Water Board (Resolution 2005-0060). We remind the Regional Board that such a program is not the answer to the methylmercury problem in the Delta—true exposure reduction will involve reducing methylmercury in the watershed. Interim efforts to reduce exposure and address potential health impacts are meant to protect fishing populations over the decades it will take to clean up the pollution. A successful program can, in fact, only be developed from the ground up. **Consequently, we support a strategy by which the Regional Board brings together impacted**

**community representatives and other public interest groups to “brainstorm” on appropriate strategies to reduce actual mercury exposure instead of a system where dischargers, water board staff, and other government agencies develop potential programs and outreach tools and then bring them to the communities. Furthermore, resources will best be employed in facilitating communities themselves to implement the strategies that they work with the Board and dischargers to develop.**

Again, we recognize the complexity of mercury remediation and the long term commitment it will take by all parties to accomplish. We assert that the BPA must embrace the diverse needs of the communities in and around the Delta, and that the watershed's beneficial uses be available for all of them, no matter their racial and cultural makeup or their economic status. Consequently, we offer these comments in the spirit of wanting to work with the Board to ensure that this BPA results in true improvements to the Delta for everyone.

Sincerely,

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West County Toxics Coalition**

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